



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1605

NATHAN S. JACOBSON, et al.,

Petitioners

vs.

ROBERT ROSE, individually and
as District Attorney of the
County of Washoe, State of
Nevada, et al.,

Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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Preliminary Statement

Pursuant to Rule 24 of the Rules of the Supreme Court, petitioners, Nathan S. Jacobson, et. al., respectfully submit this brief in reply to certain points first raised in the brief in opposition filed by respondent Nevada Bell. The remaining respondents have failed to file a brief in opposition.

1.

In its brief in opposition, Nevada Bell charges that petitioners' statement of the case is filled with exaggerations and misstatements of the record, particularly as to the conduct of Nevada Bell. Because the record below is not before this Court, petitioners deem this reply brief necessary in order to refute the charge made by Nevada Bell in its brief.

Nevada Bell claims that it did not knowingly assist in the wiretapping beyond the Court-ordered deadline, and that its employees did not (1) plan the wiretap; (2) procure the wiretapping equipment; (3) conduct the wiretap; or (4) overhear the conversation of any petitioner. (See, Brief in Opposition, pp. 3-4, 10.) In essence, Nevada Bell would have this Court believe that Nevada Bell only made line service available to the Washoe County Sheriff's Office and that the installation and operation was accomplished solely by the Sheriff's Department.

In fact, the record before the Court of Appeals unequivocally showed that Nevada Bell willingly assisted in

establishing the wiretap and in operating the wiretap beyond the Court-ordered deadline.

THE RECORD BELOW CLEARLY ESTABLISHED NEVADA BELL'S ASSISTANCE IN PROCURING THE WIRETAP AND IN OPERATING THE WIRETAP BEYOND THE COURT-IMPOSED DEADLINE

Contrary to the assertions of Nevada Bell, the record before the Court of Appeals clearly established Nevada Bell's involvement in the violation of the wiretapping provisions underlying 18 U.S.C. § 2520.

Jack Overton, a security supervisor for Nevada Bell and an inactive reserve deputy sheriff of Washoe County during the time period involved, testified that in September of 1971 respondent Benham, who was Chief Deputy of the Sheriff's Department, requested Overton to supply the Sheriff's Department with the telephone numbers that would appear on petitioner Nathan S. Jacobson's desk at Kings Castle Hotel. Overton complied with this

request and, subsequently, made arrangements for Nevada Bell to assist the Sheriff's Department in conducting the wiretap. In this regard, Overton talked to a representative of the Sheriff's Department with respect to the lines that the Sheriff's Department would have to order, and later requested a Nevada Bell employee to have lines extended at a certain location so that the wiretap could be effected.

The service that Nevada Bell supplied to set up the wiretap consisted of tracking out three Kings Castle telephone lines, bringing these lines down on a telephone pole, placing them in a juncture box with three terminals, and thereafter taking three additional wires at the Sheriff's substation and running these lines to the juncture box at the same telephone pole. The lines at the Sheriff's substation were installed by Nevada Bell in an apartment beneath the substation that was occupied by Harold Jensen, a Sheriff's Captain. Jensen testified that Robert Guthrie, a Nevada Bell employee, and another Nevada Bell

lineman came to the substation for the installation of the wiretapped lines. Jensen testified that Nevada Bell put lines on square boxes at the substation and placed the numbers of the telephones to be wiretapped on these boxes. Jensen further testified that he met with Overton at the Sheriff's substation prior to the completion of the wiretap installation and that the two men travelled from the substation to the telephone pole where the connection for the tap was to be made. At that point, Overton instructed Jensen on how to make the final connection for the wiretap.

Robert Guthrie, an installation supervisor for Nevada Bell and the employee who worked on the wiretap, testified that he was informed by his supervisor to cooperate with Overton on the installation of the wiretap. Thereafter, Guthrie and another Nevada Bell employee set up the necessary wiring to conduct the tap. This was, of course, done at both the telephone pole where the connection was to be made and at the Sheriff's substation. Guthrie further testified that

"sometime after we put the original installation in" trouble developed on the wiretapped lines. Thereafter, Guthrie and Jim Koppel, another Nevada Bell employee, on one occasion went to the substation where Guthrie had the Sheriff's personnel disconnect the wiretap installation to run a test of the lines. In all, Guthrie testified that on three or four occasions Nevada Bell had the Sheriff's Department disconnect the wiretap for repair problems and that Guthrie would listen to the wiretapped lines. When Guthrie did this, he overheard people talking on the wiretapped lines. In view of the fact that the respondents did not commence the wiretap until two days prior to the Court-ordered deadline, it is apparent that Nevada Bell worked on the wiretapped lines beyond the Court-imposed deadline--a deadline included in the amended Court order which Nevada Bell's representatives assisted in drafting.

Jim Koppel, the Nevada Bell employee who assisted Guthrie, testified that he was the person who ran the three wires

from a terminal and installed a connecting block on the end of each one at the Sheriff's substation. According to Koppel, once Nevada Bell had performed its function at the Sheriff's substation, all that was necessary to activate the wiretap was to connect the wires with a screw driver.

Koppel also testified that when trouble developed on the wiretapped lines, he and Guthrie went to the Sheriff's substation and, at Koppel's request, the Sheriff's Department disconnected a tape recorder used in effecting the intercepted recordings. Koppel testified that while he was at the Sheriff's substation for this purpose, he also overheard conversations on the wiretapped lines.

Nevada Bell contends that the only work its employees performed after the Court-ordered deadline was with respect to interference on the Kings Castle lines and not with respect to the wiretap (See Brief in Opposition, p. 10). Yet, the record is clear that the Kings Castle wiretapped lines were in need of

service work because of the wiretap.

Moreover, Koppel testified that his repair work at the Sheriff's substation concerned both the lines serving the substation and the lines serving King's Castle.

Although Nevada Bell in its brief in opposition claims that the record establishes that neither Guthrie nor Koppel overheard the conversation of any petitioner during this period, the record totally fails to support this assertion. Guthrie testified only that he overheard conversations, and Koppel testified that whereas he overheard conversations, the only voice he recognized was that of an employee of Kings Castle whom he knew. Obviously, Guthrie and Koppel, not being acquainted with the petitioners, may not have recognized their voices. The fact remains, however, that the petitioners' right of privacy was invaded through gross violations of the statutory scheme underlying § 2520, and that Nevada Bell played an integral part in this invasion of privacy.

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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